

IN THE CIRCUIT COURT OF HOWELL COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)
 Attorney General Chris Koster and)
 Missouri Department of)
 Natural Resources,)
)
 Plaintiff,)
)
 v.)
)
 COASTAL ENERGY CORPORATION)
 And FMC Transport, Inc.)
)
 Defendants.)

FILED
 AUG - 5 2016
 CINDY WEEKS
 Circuit Clerk, Howell County MO

Case No.

Consent Judgment

Plaintiff, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendants Coastal Energy Corporation and FMC Transport, Inc., by and through counsel, consent to the entry of this Consent Judgment.

The Court has read Plaintiff's Petition for Injunctive Relief and Civil Penalties, in which Plaintiff alleges that Defendants violated the Missouri Clean Water Law. The Court is advised that the parties have consented to the terms in this Consent Judgment for settlement purposes only, and that their consent is conditioned upon the Court approving the Consent Judgment in its entirety. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the issues raised by the Petition and that the parties want to terminate this controversy and consent to the

entry of this judgment without trial. The Court retains jurisdiction over the matter in order to enforce each and every term of this Consent Judgment.

The parties hereto, having consented to the entry of this Consent Judgment, now therefore, before the taking of any testimony and upon the pleadings, it is hereby agreed that:

I. Objectives of the Parties

1. The objectives of the parties to this Consent Judgment are to protect human health and the environment and to resolve the allegations contained in Plaintiff's Petition.

II. Definitions

2. Terms used herein shall have the same meaning as provided in Chapter 644 RSMo and the regulations adopted thereunder. In addition, the following terms are specifically defined:

a. "Consent Judgment" means this Consent Judgment and all attachments, which are included by reference and fully enforceable as a term of the judgment.

b. "Defendants" mean Coastal Energy Corporation and FMC Transport, Inc.

c. "Department" means the Missouri Department of Natural Resources.

d. "Office Facility" means the office and trucking facility owned by FMC Transport, Inc. located at 1 Coastal Drive, Willow Springs, MO.

e. "Permit" means Missouri State Operating Permit No. MO136883 and all subsequent storm water permits issued or reissued to the Rail Spur Facility or, if required, to the Office Facility for the disposition of storm water.

f. "Plaintiff" and "State" means the State of Missouri on the relationship of Attorney General Chris Koster and the Department.

g. "Rail Spur Facility" means the approximately 13.67 acre tank farm and all appurtenances attendant thereto located at 234 Burnham Road, Willow Springs, MO owned by Coastal Energy Corporation.

III. Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter and the parties in this case pursuant to §478.070.1 RSMo. Venue is proper in this court pursuant to §644.076.1 RSMo because the Defendants' conduct giving rise to this action took place in Howell County.

IV. Parties Bound

4. The provisions of this Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs,

successors, assigns, and to all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of the parties to this action or their agents, servants, employees, heirs, successors, and assigns. Defendants shall provide a copy of this order to all persons or entities retained to perform work required by this order.

V. Satisfaction and Reservation of Rights

5. Upon the completion of all terms of this Consent Judgment, including the payment of civil penalties, completion of all schedules of compliance and the payment of any stipulated penalties due under the terms of this Consent Judgment, Defendants are relieved of liability for the violations alleged in the Petition filed in this action.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Clean Water Law or its implementing regulations or under other federal or state laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

a. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for violations of the Missouri laws or regulations that were not alleged in the petition.

c. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of the Missouri Clean Water Law or regulations promulgated under its authority.

d. The State of Missouri further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' facility, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

VI. Injunctive Relief

7. Defendants are ordered to comply with all State of Missouri environmental statutes and all implementing regulations for any and all future activities in the State of Missouri.

8. As long as Defendants' operations at the Rail Spur Facility or the Office Facility require a Permit from the Department, and until such time as the applicable permit is terminated, Defendants are ordered to operate and maintain their respective Facilities so there are no discharges of

storm water to surface or subsurface waters except as authorized by the Permit.

9. Defendant, Coastal Energy Corporation, is ordered to perform a monthly visual inspection of the tank foundation, connections, coatings, tank walls and piping system for corrosion, leaks, and other physical damage that could affect the integrity of the tank system at the Rail Spur Facility.

10. Except as provided herein, Coastal Energy shall keep the valves between the ethanol tanks at the Rail Spur Facility locked when not in service. One tank may remain unlocked for loading purposes. Valves to more than one tank may be opened simultaneously if the combined tank volume of the ethanol in the tanks with the valves open does not exceed the capacity of one full tank (31.5 ft. or 26,615 gallons).

11. With respect to the Rail Spur Facility, Defendant, Coastal Energy Corporation, is ordered to: 1) maintain a log of each monthly visual inspection; 2) record the findings of the inspection and any repairs made; and, 3) keep the inspection log onsite for a period of five years and make it available to the staff of the Department of Natural Resources.

12. Defendant, Coastal Energy Corporation, is ordered to report all discharges of storm water to waters of the State from the Rail Spur Facility to the Department of Natural Resources, Southeast Regional Office in Poplar Bluff between the hours or 8:00 a.m. to 5:00 p.m. Monday through

Friday or to the Department's 24 hour spill line at 573-634-2436 after 5:00 p.m. on weekdays, weekends or holidays within 24 hours from the time the Defendant, or any agent or employee of Defendant, becomes aware of the discharge. The report shall contain the date, time, duration, quantity of, and reason for the discharge.

13. Defendant, Coastal Energy Corporation, is ordered to collect samples of storm water discharges to waters of the state from the Rail Spur Facility once per day for the duration of the discharge, complete a chemical analysis of the discharge as prescribed in the Permit, and submit the analytical results to the Department's Southeast Regional Office in Poplar Bluff by the 28th day of the month following the cessation of the discharge. Samples shall be collected and analyzed pursuant to the methods set forth in 10 CSR 20-7.015(9) (D) 2.

14. With respect to the Rail Spur Facility, Defendant, Coastal Energy Corporation, is ordered to maintain records and submit an annual report to the Department by January 28th of each year for the preceding year that includes the following information:

a. A record of maintenance and repairs performed during the year, average number of times the facility is checked to see if it is operating properly, and a description of any unusual operating conditions encountered during the year;

b. The number of days the facility discharged during the year, the discharge flow, the reasons the discharge occurred and an effluent analysis of the discharge.

15. If the Defendant, Coastal Energy Corporation, desires to remove, relocate, install, or make any modifications to an outfall at the Rail Spur Facility, Defendant shall seek a permit modification from the Department.

16. Defendant, Coastal Energy Corporation, is ordered to develop, maintain, and submit to the Department for review and comments, an Operation and Maintenance Manual that includes key operating procedures and a summary of the operation of the Rail Spur Facility. Defendant further agrees:

- a. To make the manual available to all Coastal employees;
- b. To develop the manual within thirty (30) days of entry of this Consent Judgment;
- c. That upon the receipt of any written comments from the Department after review, Defendant shall have thirty (30) days to address the comments to the satisfaction of the Department.

17. Defendant, Coastal Energy Corporation, is ordered to develop and implement a site specific Storm Water Pollution Prevention Plan ("SWPP") for the Rail Spur Facility that includes the bulk plant area,

maintenance area, and storage area of the facility in accordance with the terms and conditions set forth in the Permit.

18. Defendant shall submit the site specific SWPP to the Department for review and comments within thirty (30) days of entry of this Consent Judgment. Upon the receipt of any written comments from the Department, Defendant shall have thirty (30) days to address the comments to the satisfaction of the Department.

19. Defendant, Coastal Energy Corporation, is ordered to construct a 28 feet wide by 78 feet long by 20 feet high canopy over its asphalt loading rack area to prevent storm water contact with any materials that might be released during loading activities. Defendant shall complete construction of the canopy by July 1, 2016. Defendant in good faith estimates that the cost to construct the canopy will not be less than \$30,000.00. In the event the entire thirty thousand (\$30,000.00) is not expended, the difference shall be paid as a civil penalty within 30 days of completion of the canopy and payment shall be delivered in accordance with paragraph 28.

VII.Information Collection and Retention

20. The State, through its authorized representatives, shall have the right of entry into any facility covered by this Consent Judgment, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Judgment;
- b. verify any data or information submitted to the State in accordance with the terms of this Consent Judgment;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Judgment.

21. Until five years after the termination of this Consent Judgment, Defendants shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of its obligations under this

Consent Judgment. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the State, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

22. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the State at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the State, Defendant shall deliver any such documents, records, or other information to the State.

23. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

VIII. Civil Penalty

24. Defendants consent to the entry of judgment in favor of the State of Missouri for a civil penalty in the total amount of \$25,000.00.

Defendants hereby authorize entry of this judgment against them and in favor of the State of Missouri for this sum.

25. Defendants agree to pay the \$25,000.00 civil penalty by check made payable to the "State of Missouri (Howell County)" within thirty (30) days of the entry of this Consent Judgment by mailing same to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

IX. Stipulated Penalties

26. In the event that Defendants fail to comply with the requirements set forth in the Permit, Missouri Clean Water Law and its implementing regulations, or this Consent Judgment, Defendants shall be liable for stipulated penalties in accordance with the following schedule:

A. In the event Defendant, Coastal Energy Corporation, fails to construct the canopy at the Rail Spur Facility in accordance with this Consent Judgment, Defendant agrees to pay a total stipulated penalty in the amount of \$30,000.00.

B. In the event of an unpermitted storm water discharge to waters of the state associated with Defendant, Coastal Energy Corporation's industrial activities at the Rail Spur Facility, Defendant, Coastal Energy Corporation, agrees to pay a stipulated penalty in the amount of \$5,000.00 per discharge.

C. In the event Defendant, Coastal Energy Corporation, installs, removes, relocates, or modifies in any way, any outfall at the Rail Spur Facility without prior permission from the Department, Defendant agrees to pay a stipulated penalty in the amount of \$500.00 per installation, removal, or modification.

D. For all other Permit violations not specified in paragraphs 27A, 27B, and 27C and any other violations of this Consent Judgment or Missouri Clean Water Law and the regulations promulgated thereunder, Defendant, Coastal Energy Corporation, agrees to pay stipulated penalties in the amount of \$100.00 per day for each day of each violation.

27. Stipulated penalties shall be due and payable within ten days of demand being made by the Attorney General's Office. Defendant shall pay stipulated penalties by check made payable to the "*State of Missouri (Howell County)*" and mailed, along with a copy of the State's stipulated penalty demand letter, to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. That check will be deposited and processed in accordance with the consent judgment and Missouri law.

28. The inclusion of stipulated penalty provisions in this Consent Judgment, and the payment of stipulated penalties, does not limit the State's ability to pursue other penalties for the same acts; where a violation

of this Consent Judgment also constitutes a violation of a statute, stipulated penalties may be collected in addition to statutory penalties imposed for those violations.

X. Modification

29. Except as otherwise specified herein, this Consent Judgment may be modified or amended only upon written agreement by and among the parties, their successors and assigns and with the approval of the Court. All modifications shall be in writing and filed with the Court.

XI. Costs

30. Defendant shall pay all court costs in this action.

The parties hereby consent to this Consent Judgment through their duly authorized representatives as indicated below.

XII. Termination

30. Defendant may move for termination of this Consent Judgment after Defendant has maintained compliance with this Consent Judgment, the Missouri Clean Water Law and implementing regulations for a period of two years, however:

- a. The State reserves the right to oppose the termination of the Consent Judgment on any grounds;
- b. The Consent Judgment shall terminate unless the State objects within 30 days of service of the motion;

c. If the State files an objection, the motion and objection shall be heard by the Court.

COASTAL ENERGY CORPORATION

By: David Montgomery
David Montgomery

Title: President

Date: 06/17/2016

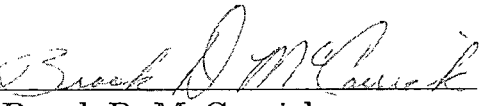
FMC TRANSPORT, INC.

By: David Montgomery
David Montgomery

Title: President

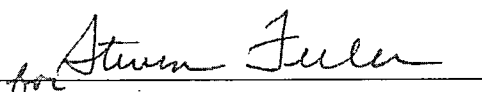
Date: 06/17/2016

MISSOURI ATTORNEY GENERAL'S OFFICE

By: 
Brook D. McCarrick
Assistant Attorney General

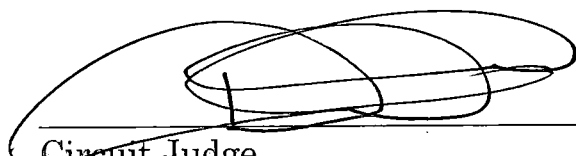
Date: 6/30/16

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: 
Leanne Tippet Mosby, Director
Division of Environmental Quality

Date: 7/6/16

SO ORDERED.



Circuit Judge

Date: 8-5-16